

REMARKS

Claims 17-24, 27, 28 and 30-31 are pending in this Application. By this Reply, Applicants amended claims 17, 18 and 30. Accordingly, claims 17-24, 27, 28 and 30-31 remain at issue following this Reply.

In the Office Action, the Examiner rejected claims 19 and 30-31 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner also rejected claims 17-19, 21-24 and 27-28 under 35 U.S.C. § 102(b) as being anticipated by Whitman (USPN 3,789,835), and claim 30 under 35 U.S.C. § 103(a) as being unpatentable over Whitman in view of Santilli (USPN 4,726,356). Applicants respectfully traverse these rejections.

The Examiner also noted that Claim 30 would be allowable if rewritten or amended to overcome the § 112 rejections.

In view of the Amendments and Remarks herein, Applicants believe the present application is in condition for allowance and respectfully request notice of same.

Interview Summary

On February 23, 2009, the undersigned, Matthew J. Gryzlo, and Alissa Misun, attorneys for Applicants, conducted a telephonic interview with Examiner Merene. Applicants thank the Examiner for the time spent to conduct this interview. The below summary constitutes the complete written statement required by 37 C.F.R. § 1.133 and complies with MPEP § 713.04.

During the interview, Applicants' counsel and Examiner Merene discussed independent claim 17, the pending rejection of that claim, and the art cited in the rejection of that claim, specifically including the Whitman reference. While no agreement was reached during the interview, it was agreed that because of the great distinction between Applicants' invention and the Whitman reference, further amendment was possible to overcome the Whitman reference.

Following the interview, Applicants' counsel submitted a draft amendment to claim 17 in the same form submitted in this Reply, and Examiner Merene informally indicated that the amendment should distinguish claim 17 over Whitman. Applicants graciously thank Examiner Merene for the time spent discussing this case and reviewing the material provided by Applicants' counsel.

§112 Rejections

Claim 17 has been amended to provide an antecedent basis for the limitation “upper and lower surfaces” found in claim 19. Additionally, claim 30 has been amended to provide sufficient antecedent basis for the “mount.” Applicants believe that claim 31 was objected to due to the lack of antecedent basis for the “mount” in claim 30. Accordingly, Applicants believe that the rejections to claims 19, 30 and 31 under §112 have been appropriately corrected.

The Examiner indicated that claim 30 would be allowable if amended to overcome the rejection under 35 U.S.C. §112. Because Applicants believe claim 30 has been properly amended to overcome this rejection, Applicants believe claim 30 is now allowable. As claim 31 depends from claim 30, Applicants also believe claim 31 is allowable.

§102/§103 Rejections

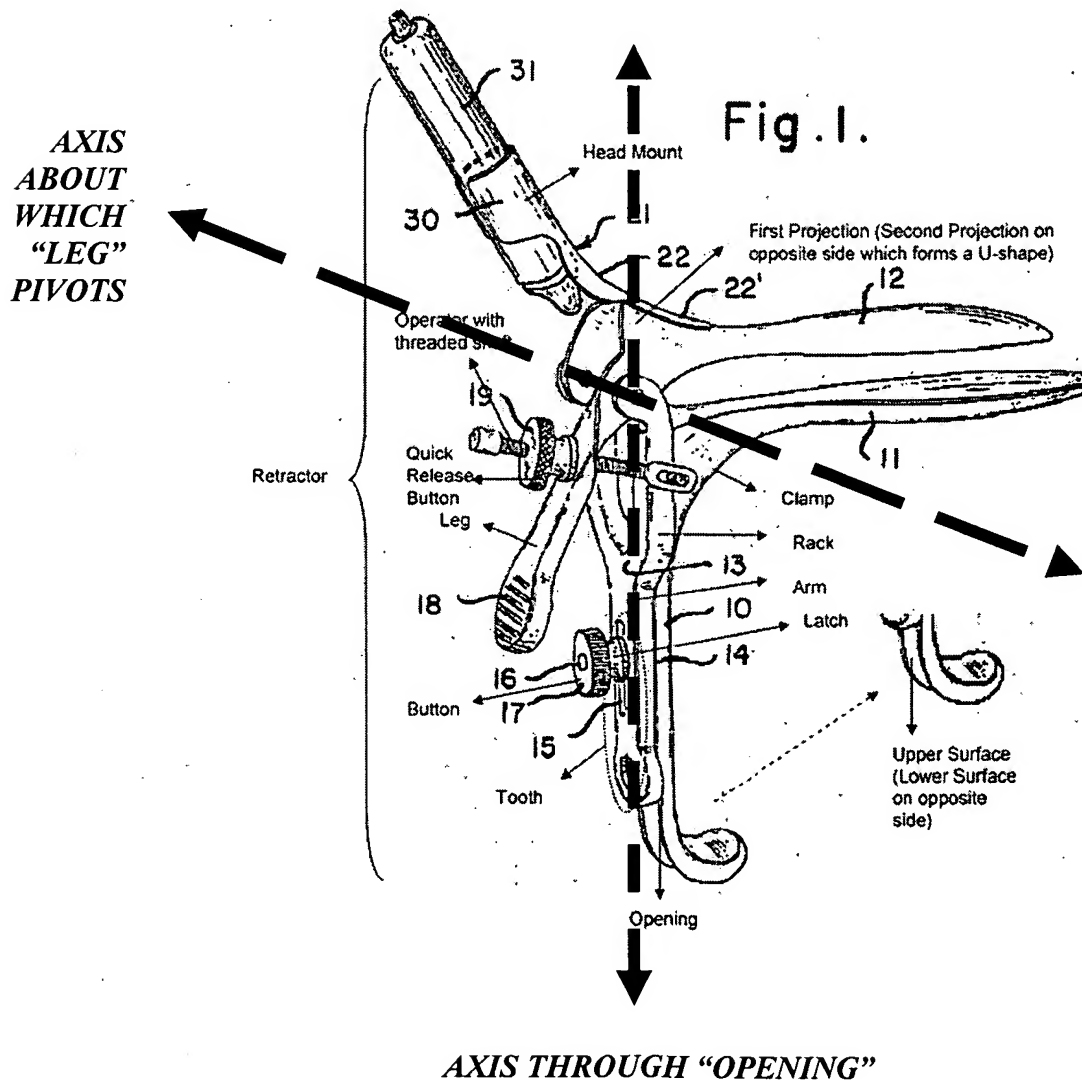
The Examiner rejected claims 17-19, 21-24 and 27-28 under 35 U.S.C. 102(b) as being anticipated by Whitman (USPN 3,789,835). According to the Examiner, Whitman discloses a surgical retractor having at least one arm operably connected to a rack, the surgical retractor comprising: a clamp having an opening for receiving a portion of the arm, and a latch connected to the clamp for selectively retaining the clamp at a selected position on the arm; an angularly adjustable leg pivotally coupled to the clamp, the leg having a retractor blade connector head mount for receiving a connector head of a retractor blade; and an operator connected to the leg to adjust the angular position of the leg with respect to the clamp, the operator comprising a threaded shaft operably coupled to the clamp and the leg, wherein the threaded shaft is adapted for rotation to allow incremental movement of the leg relative to the clamp (see Fig below and see Col 2 lines 35-40, where the operator allows for incremental movement of the leg).

By this reply, claim 17 has been amended to include the following underlined portions: “...a clamp having an opening for receiving a portion of the arm, the opening defined by an upper surface and a lower surface, the opening having an axis that extends between the upper surface and the lower surface of the opening, and the axis further extending from a first open end of the opening to a second open end of the opening...an angularly adjustable leg pivotally coupled to the clamp about a pivot axis that is parallel to the axis of the opening, wherein the leg pivots relative to the upper surface of the opening and the lower surface of the opening...”

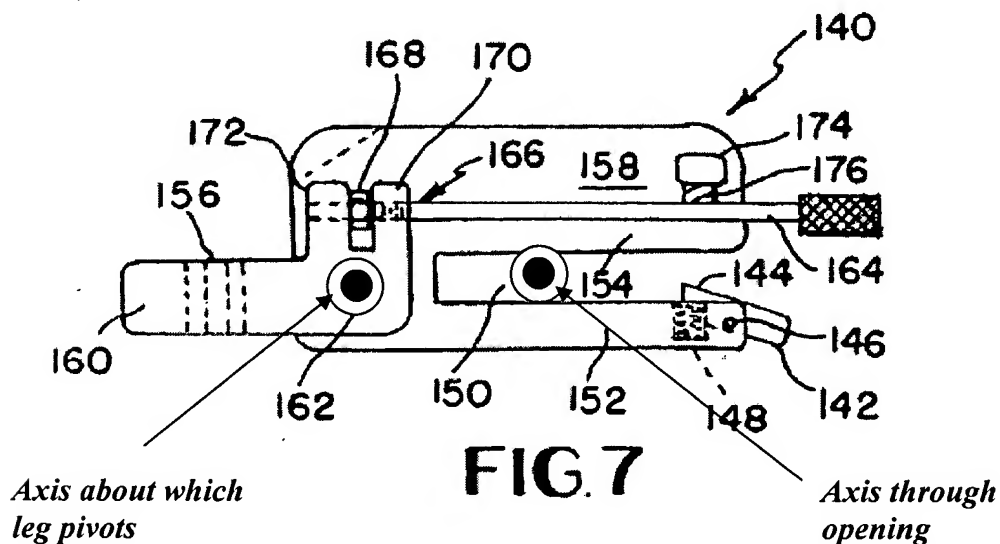
Page 7 of 10

Whitman does not disclose a leg which pivots about an axis that is parallel to the axis of the opening, as defined by amended claim 17.

As shown in the figure below from Whitman, the Examiner has identified the opening in Whitman near the bottom of the page, and the Examiner has indicated the direction of the opening. Accordingly, the "axis that extends between the upper surface and the lower surface of the opening" in Whitman extends downward from the speculum as shown and labeled. The Examiner has also identified the "leg" in Whitman as reference number 18 in the figure below. The leg pivots about a pivot pin. Applicants have identified in the Figure the "pivot axis" which runs through the pivot pin. The intersection of the axis about which the leg pivots and the axis through the opening which receives the arm is at a 90° angle. (Note: the figure below is a perspective view; if it was a direct side view, the intersection of these two axes would appear as a right angle.) Thus, the two axes recited in amended claim 17 of the present application are not parallel, as recited in claim 17, but rather are perpendicular to one another.



In contrast, as seen in Figure 7 below (from Applicants' application), the "pivot axis" and the "axis that extends between the upper surface and the lower surface of the opening" of Applicants' invention (and as claimed in amended claim 17) are parallel. As required in amended claim 17, the opening (150) has an axis that extends between the upper surface and the lower surface (152, 154). The axis is further recited in claim 17 as extending from a first open end of the opening to a second open end of the opening. Thus, the axis runs directly into/out of the page from this perspective (the axis is shown as the circle with a point inside of it). The axis cannot run across the page in the figure below, because claim 17 recites that "the axis further extending from a first open end of the opening to a second open end of the opening." If the axis through the opening extended across the page from left to right or right to left, one of the ends would be a closed end (the left side of the opening below). Thus, the axis extends into and out of the paper. Additionally, the leg (160) pivots about pivot point (162). This claimed "pivot axis" about which the leg pivots around also extends into and out of the paper with respect to the figure below (this axis is also shown as a circle with a point inside of it). Thus, the axis through the opening and the "pivot axis" about which the leg pivots as claimed in claim 17 of the present application are parallel to each other.



Applicants believe claim 17, as amended, is allowable over Whitman for the reasons discussed above. Because claims 18-19, 21-24 and 27-28 all depend from claim 17, Applicants believe those claims are allowable over Whitman for the same reasons.

The Examiner rejected claim 20 under 35 U.S.C. 103(a) as being unpatentable over Whitman (USPN 3,789,385) in view of Santilli et al. (USPN 4,726,356). Claim 20 depends from independent claim 17. Neither Whitman nor Santilli disclose parallel axes through the opening of the clamp and about which the leg rotates. For the same reasons as discussed above, claim 20 is allowable over the prior art in light of the amendments to claim 17.

CONCLUSION

In light of the foregoing, Applicants respectfully submit that all the claims are now allowable, and request early notification of same. The Commissioner is authorized to charge any additional fees or credit any overpayments associated with this Amendment to Deposit Account 23-0280. Applicants further invite the Examiner to contact the undersigned representative at the telephone number below to discuss any matters pertaining to the present Application.

Respectfully submitted,

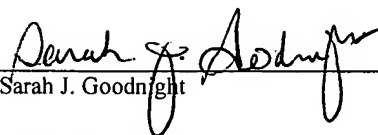
Dated: March 4, 2009

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CERTIFICATE OF MAILING (37 C.F.R. § 1.8a)

I hereby certify that this correspondence is, on the date shown below, being deposited with the United States Postal Service, with first class postage prepaid, in an envelope addressed to: MAIL STOP AMENDMENT, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on March 4, 2009.


Sarah J. Goodnight

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